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10/689,396	10/20/2003	Juba M. Salo	042933/269778	2878
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ALSTON & BIRD LLP			GERGISO, TECHANE	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/689,396	SALO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	TECHANE J. GERGISO	2437	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 06/03/2009.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-36 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-36 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on June 03, 2009 has been entered. Claims 1-36 have been examined and are pending.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claim 1, 6, 10, 19 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "less than" in claim 1: line 10; claim 6: line 4; claim 10: line 11; claim 19: line 19; claim 28: line 14 are a relative term which renders the claim indefinite. The term "less than" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The claim recites "the terminal receives a portion but less than all of the download content" and it is not clear how much less the portion to has been received when compared to the downloaded content.

***Response to Arguments***

4. Applicant's arguments with respect to claims 1-36 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Syed (US Pub. No.: 2003/0092376) in view of Moshir et al. (hereinafter referred to as Moshir, US Pub. No.: 2004/0003266).

As per claim 1, 10, 19 and 28:

Syed discloses a system, a method, a computer readable medium, an apparatus comprising:

a terminal comprising a processor configured to receive service loading content that identifies download content and has a digital signature, wherein the processor is configured to authenticate the service loading content based upon the digital signature, and when the service loading content is authenticated, pull the download content to the terminal, wherein the processor

is configured to authenticate the service loading content, and pull the download content, in response to receiving the service loading content and independent of interaction from a user of the terminal (0031; 0046; Push-Pull Gateway; 0048; push authenticator; 0120; Authentication; 0132; Service Header Data; 0133; Data Service Header; Digital Signature).

Syed does not explicitly disclose wherein the processor is configured to determine when an interruption occurs in pulling the download content such that the terminal receives a portion but less than all of the download content, and when an interruption occurs in receiving the content, recover the download content including receiving a remaining portion of the download content without also receiving at least part of the previously received portion. Moshir, in analogous art, however discloses wherein the processor is configured to determine when an interruption occurs in pulling the download content such that the terminal receives a portion but less than all of the download content, and when an interruption occurs in receiving the content, recover the download content including receiving a remaining portion of the download content without also receiving at least part of the previously received portion (0064; 0164: Using a download resumption feature, an embodiment detects interruption 316 of a download, e.g., by a service outage. If the target 500 is a mobile workstation, the user can then simply disconnect it and reconnect it at a different location that is not out of service. If the update server can be accessed (via TCP/IP, for instance), the embodiment will resume its download 312 from at or near the point in the download at which it was interrupted, instead of starting again from the beginning to retransmit the entire package).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the system disclosed by Syed to include wherein the processor is configured to determine when an interruption occurs in pulling the download content such that the terminal receives a portion but less than all of the download content, and when an interruption occurs in receiving the content, recover the download content including receiving a remaining portion of the download content without also receiving at least part of the previously received portion. This modification would have been obvious because a person having ordinary skill in the art would have been motivated to do so to provide systems for determining if software needs updating, and if so, then updating the software across a network with reduced demands on a human administrator to facilitates software deployment, software installation, software updating, and file distribution based on software and patch finger printing across multiple operating systems and devices, across a network as suggested by Moshir in (column 2: lines 33-40).

As per claim 2, 11, 20 and 29:

Syed discloses a system, a method, a computer readable medium, an apparatus, wherein the processor of the terminal is configured to verify the digital signature with a public key to thereby authenticate the service loading content (0133).

As per claim 3, 12, 21 and 30:

Syed discloses a system, a method, a computer readable medium, an apparatus comprising: a push initiator configured to digitally sign the service loading content with a private

key associated with the public key, and thereafter transmit the service loading content to the terminal (0133).

As per claim 4, 13, 22 and 31:

Syed discloses a system, a method, a computer readable medium, an apparatus comprising:

an origin server associated with the download content, wherein the service loading content identifies the origin server associated with the download content (0048: 0090; 0105; ID/Original; Content Provider Originating Address),

wherein the processor of the terminal is configured to send a request for the download content to the origin server when the service loading content is authenticated, and wherein the processor is configured to receive the download content from the origin server in response to the request (0048: 0090; 0105; ID/Original; Content Provider Originating Address; 0120; Authentication; 0132; Service Header Data; 0133; Data Service Header; Digital Signature).

As per claim 5, 14, 23 and 32:

Syed discloses a system, a method, a computer readable medium, an apparatus, wherein the processor of the terminal is configured to operate a download agent, wherein the download agent is configured to receive a download descriptor, and thereafter receive the download content (0055; 0220; OTA; well-known user agent).

As per claim 6, 15, 24 and 33:

Moshir discloses a system, a method, a computer readable medium, an apparatus, wherein the download content comprises a plurality of data packets, and wherein the download agent is configured to determine when an interruption occurs in receiving the plurality of data packets such that the download agent receives less than the plurality of data packets of the download content, and when an interruption occurs in receiving the plurality of data packets, recover the download content such that the download agent receives the plurality of data packets (0064; 0164: Using a download resumption feature, an embodiment detects interruption 316 of a download, e.g., by a service outage. If the target 500 is a mobile workstation, the user can then simply disconnect it and reconnect it at a different location that is not out of service. If the update server can be accessed (via TCP/IP, for instance), the embodiment will resume its download 312 from at or near the point in the download at which it was interrupted, instead of starting again from the beginning to retransmit the entire package).

As per claim 7, 16, 25 and 34:

Moshir discloses a system, a method, a computer readable medium, an apparatus, wherein the download agent is further configured to determine at least one remaining data packet to be received by the download agent to thereby complete reception of the plurality of data packets of the download content, instruct the origin server to send the at least one remaining data packet, and receive the at least one remaining data packet such that the download agent receives the plurality of data packets (0064; 0164).

As per claim 8, 17, 26 and 35:

Syed discloses a system, a method, a computer readable medium, an apparatus, wherein the download content comprises a plurality of data packets, and wherein the processor of the terminal is configured to operate a download agent configured to receive the plurality of data packets and receive at least one information packet regarding at least one group of at least one data packet (0111; 0114).

As per claim 9, 18, 27 and 36:

Syed discloses a system, a method, a computer readable medium, an apparatus, wherein the download agent is configured to monitor the received data packets to determine, based upon at least one information packet, when an interruption occurs in receiving the plurality of data packets such that the download agent receives less than the plurality of data packets of the download content, and wherein the download agent is configured to recover the download content such that the download agent receives the plurality of data packets when an interruption occurs in receiving the plurality of data packets (0111; 0114).

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the notice of reference cited in form PTO-892 for additional prior art.

***Contact Information***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to TECHANE J. GERGISO whose telephone number is (571)272-3784 and fax number is **(571) 273-3784**. The examiner can normally be reached on 9:00am - 6:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Emmanuel Moise can be reached on (571) 272-3865. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Techane J. Gergiso/

Examiner, Art Unit 2437